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10/022,439	12/20/2001	Stanley E. Rodabaugh	19860.00	5109

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EXAMINER

DEL SOLE, JOSEPH S

ART UNIT	PAPER NUMBER
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1722

DATE MAILED: 06/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/022,439

Applicant(s)

RODABAUGH, STANLEY E.

Examiner

Joseph S. Del Sole

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8 and 9 is/are rejected.
- 7) ☒ Claim(s) 7 and 10 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Information Disclosure Statement*

1. The information disclosure statement filed 12/20/01 complies with the provisions of 37 CFR 1.97, 1.98 and MPEP 609. It has been placed in the application file and the information referred to therein has been considered as to its merits.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-5 and 8-9 are rejected under 35 U.S.C. 102(e) as being anticipated  
Gibran et al (6,280,369).

Gibran et al teach a device having a base member (Fig 1, #12), the base member configured as a semi-circle having an inner circumferential surface (Fig 1), an outer circumferential surface (Fig 1), a length, a width, a first end and a second end (Fig 1, the curved edges of #12 complete its circumferential surface); means for rocking the base member back and forth (Fig 1, #14); a first handle member (Fig 1, #14 on the left) disposed at the first end on the inner circumferential surface; a second handle member

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(Fig 1, #14 on the right) disposed at the second end on the inner circumferential surface; wherein the first handle member and the second handle member are of rounded configuration (Fig 1); the base member, the first handle member and the second handle member are of one-piece construction (Fig 1, the members are contiguous and affixed); the base member, the first handle member and the second handle member are fabricated from wood (col 2, lines 11-15).

4. Claims 1-4, 6 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Sheffield.

Sheffield teaches a device having a base member (Fig 2, #27), the base member configured as a semi-circle having an inner circumferential surface (Fig 2, the top), an outer circumferential surface (Fig 2, the bottom), a length, a width, a first end and a second end (Fig 1); means for rocking the base member back and forth (Fig 2, #30); a first handle member (Fig 2, #30 on the left) disposed at the first end on the inner circumferential surface; a second handle member (Fig 2, #30 on the right) disposed at the second end on the inner circumferential surface; wherein the first handle member and the second handle member are of rounded configuration (Fig 2); the base member, the first handle member and the second handle member are of one-piece construction (col 2, lines 41-44); the base member, the first handle member and the second handle member are fabricated from plastic (col 2, lines 31-44).

5. Claims 1-4 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Watson (Des. 353,989).

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Watson teaches a device having a base member, the base member configured as a semi-circle having an inner circumferential surface, an outer circumferential surface, a length, a width, a first end and a second end; means for rocking the base member back and forth; a first handle member disposed at the first end on the inner circumferential surface; a second handle member disposed at the second end on the inner circumferential surface; wherein the first handle member and the second handle member are of rounded configuration; the base member, the first handle member and the second handle member are of one-piece construction (Fig 1, the members are contiguous and affixed).

6. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Ehren (3,957,039).

Ehren teaches a device having a base member (Fig 6, #15), the base member configured as a semi-circle having an inner circumferential surface, an outer circumferential surface, a length, a width, a first end and a second end (Fig 6); means for rocking the base member back and forth (Fig 6, #21 and #22); a first handle member (Fig 6, #21) disposed at the first end on the inner circumferential surface; a second handle member (Fig 6, #22) disposed at the second end on the inner circumferential surface; wherein the first handle member and the second handle member are of rounded configuration (Fig 6).

7. Claims 1-4 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Rhoades et al (4,838,986).

Rhoades et al teach a device having a base member (Fig 1), the base member configured as a semi-circle having an inner circumferential surface (Fig 1, #12), an outer circumferential surface (Fig 1, #11), a length, a width, a first end and a second end (Fig 1); means for rocking the base member back and forth (Fig 1, #14); a first handle member (Fig 1, #14 on the left) disposed at the first end on the inner circumferential surface; a second handle member (Fig 1, #14 on the right) disposed at the second end on the inner circumferential surface; wherein the first handle member and the second handle member are of rounded configuration (Fig 1); the base member, the first handle member and the second handle member are of one-piece construction (Fig 1, the members are contiguous and affixed).

8. Claims 1-4 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Peirce (132,736).

Peirce teaches a device having a base member (Fig 2), the base member configured as a semi-circle having an inner circumferential surface (Fig 2, a'), an outer circumferential surface (Fig 2, a'), a length, a width, a first end and a second end (Fig a'); means for rocking the base member back and forth (Fig 2, B); a first handle member (Fig 2, B on the left) disposed at the first end on the inner circumferential surface; a second handle member (Fig 2, B on the right) disposed at the second end on the inner circumferential surface; wherein the first handle member and the second handle member are of rounded configuration (Fig 2); the base member, the first handle member and the second handle member are of one-piece construction (Fig 2, the members are contiguous and affixed).

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***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gibran et al (6,280,369) in view of either Conkey (4,718,769).

Gibran et al teach the apparatus as discussed above including teaching handle members made of plastic (col 2, lines 10-15).

Gibran et al fail to teach the base member fabricated from plastic.

Conkey teaches rollers and handles made of plastic for the purpose of making the surface easily releasable from dough (col 2, lines 23-33).

It would have been obvious to one having ordinary skill in the art at the time of the Applicant's invention to have modified the invention of Gibran et al with the base member being plastic as taught by Conkey because it enables dough to be easily releasable from the surface.

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***Allowable Subject Matter***

12. Claims 7 and 10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.


13. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record fails to teach or suggest a device having a semicircle base member with handles at either end, that is of one-piece construction, wherein the base member and the handles are fabricated from marble, in combination with the features of the parent claims.


***Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph S. Del Sole whose telephone number is (703) 308-6295. The examiner can normally be reached on Monday through Friday from 8:30 A.M. to 5:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ms. Wanda Walker, can be reached at (703) 308-0457. The official fax phone number for the organization where this application or proceeding is assigned is (703) 872-9310 for non-after finals and (703) 872-9311 for after finals.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

  
J.S.D.  
June 23, 2003

  
ROBERT DAVIS  
PRIMARY EXAMINER  
GROUP 1300 / 1700

6/24/03